

TOWN OF WESTON, CONNECTICUT  
ZONING BOARD OF APPEALS HEARING  
May 27, 2008

MINUTES

Present: Board Members: Chairman Richard Wolf, Vice-Chairman MacLeod Snaith, Nick Noyes, Carolyn Mulcahey, Robert Gardner and Alternate: Maryann Murray

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Mr. Wolf opened the public hearing at 7:30 p.m. The Board Secretary then read the notice of the public hearing into the record.

78 BIRCH HILL ROAD EXTENSION, owner, ROGERS, EDWARD N., Map 15 Block 2 Lot 21, variance to Section 321.4 (d) to permit the approval of a "split lot", a lot that does not have 2 contiguous acres of land because it is divided by an access way.

Attorney George Guidera came forward to present the application. He gave a history of the property noting that Mr. Rogers and his neighbor, Mr. Weeks had entered into an agreement to split both of their lots as part of a subdivision application. The P&Z Commission had requested that their two applications be combined to create one subdivision and it gave approval in 2000. Mr. Weeks was not happy with the P&Z conditions and appealed to the Superior Court. Discussion ensued.

Mr. Snaith noted that when P&Z requested that they join applications, and through no fault of Mr. Rogers, it prevented the homeowner from using his property. Attorney Guidera stated that because of Mr. Weeks' action in the Superior Court, the subdivision approval was lost because the Mylar maps were not filed with the Town Clerk in time. He further noted that the Rogers' are caught in a "Catch 22" because they did not create this hardship themselves. Mr. Wolf questioned whether the property had ever been taxed as 2 building lots? Mr. Guidera stated that it has not because they never perfected the subdivision. Mr. Rogers was "joined" with Mr. Weeks and got stuck because Mr. Weeks never filed the maps. Mr. Noyes commented that the case seems to pivot on the demand of the P&Z for the two to join applications. He asked whether there was any documentation to show that the P&Z asked the two to join applications. Discussion ensued.

Michael Pearl, 82 Birch Hill Road came forward and stated that he lives at the lot past the Rogers lot and adjacent to Mr. Weeks' lot. He stated that he read through the application and came to the sense that the entire application is premised on the fact that the P&Z required that these two parties join together. He stated that he read the minutes from that P&Z hearing and the only evidence of any kind of joining of the parties was a mere suggestion. It doesn't seem to rise to the level of a demand. He thinks that what Mr. Rogers did is a voluntary, self-created hardship and he could have pursued his legal rights if he was denied by the P&Z. As it stands now, there is no subdivision, there was initial approval, but until the mylar is filed, there was no subdivision and no legal lots. He also

believes if Mr. Weeks did not file the mylar, it violated their agreement and Mr. Rogers would have a claim today against Mr. Weeks for not going forward with the filing of the mylar. He reiterated that he thinks that this is a self-created hardship.

Bob Rosenbloom, 84 Birch Hill Rd. came forward and stated that he lives at the end of Lot A and has lived there for 10 years. He noted that he got involved with Mr. Weeks regarding developing the 20 acres and in concern for safety and privacy, he agreed with the widening of the road and the amount of lots. Then everything got put on hold and when they subsequently found out that the approvals fell through, it felt like they got shafted. He stated that his concern is for his privacy, not so much for safety due to the widening of road. If they put a house across from him and it is 3 stories high, he loses.

Gil Wisebloom, 76 Birch Hill Road, came forward and stated that he would be affected by both lots. His concern is for his privacy, the back yards would be totally open to each other.

Phyllis Rasten, 73 Birch Hill Road, came forward and stated that they access their property from Birch Hill, but they back up to extension. Her concern is for the extra traffic on road. She purchased her property because she heard that the 21 acres was open space. She wanted to come tonight to see if should be concerned. Her realtor had told her that they could not put a subdivision back there without her giving some her property.

Attorney Guidera then asked Bob Turner, Code Enforcement Officer, if he remembered the conversations regarding the joining of the two applications. Mr. Turner replied that he knows there was certain level of upset and aware of how it unfolded, but he cannot speak in the form of testimony. He noted that Don Saltzman had asked him to look at the 2 lots to see if there was way that a split lot condition could be minimized. There was not much to do because you can't put right angle turns in the road. The road is where it is because of the property line being fixed with dwellings and occupants.

Mr. Wolf then asked for Mr. Turner's opinion, as a zoning officer if he agreed with the facts presented and that they were requested to combine applications. Mr. Turner responded that there were arguments that came out after that meeting that centered around difficulties and had to work with it all.

Mr. Pearl then commented that Mr. Turner has been helpful and noted his appreciation. He stated that he was terrific in helping them understand the circumstances. He further noted that it was merely a request that they combine applications and they complied, it was not a requirement and they did not have to comply.

Ms. Mulcahey then asked Attorney Guidera if his client ever filed a letter with the town or make formal statement to the town regarding his dissatisfaction with Mr. Weeks. Attorney Guidera responded that they wouldn't have filed anything with town regarding Mr. Weeks although they had conversations with the town attorney regarding their disapproval. They got a clear feeling that nothing would be approved without the two joining together.

Attorney Guidera then stated that the split lot regulation came in 2002, the lot was approved in 2000. It was an administrative requirement that they file the mylars, it was an approved split lot in 2000 and he thinks that there is an unfairness factor and request that they put it back in the position it was previously approved in.

Ms. Murray then questioned whether there was anything that prevented Attorney Guidera's client from filing the approved mylar. Attorney Guidera stated that Mr. Weeks would then have wound up with a subdivision of his property which he did not want and he threatened to sue if they did file the mylars because his taxes would go up.

Bob Rosenbloom then commented that who is to say zoning won't change next year? The residents purchased here based on the zoning regulations. They combined the applications, missed the date and they should now look at it as it stands today.

After some additional discussion the public hearing as closed at 8:27 p.m.

#### Deliberations

Ms. Murray commented that she is not convinced that this is not a self induced hardship. She believes that as joint applicants, Mr. Rogers may have had a claim against Mr. Weeks and there seems to be nothing that prevented the filing before the appeal. There was no action taken with litigation regarding the P&Z requirement of the joint application and she still thinks that they had authority to preserve their rights on that subdivision.

Mr. Snaith commented that he tends to think it is not a self inflicted hardship. Knowing how boards work and how they speak to applicants, he feels that the suggestion was more than just a suggestion despite the minutes not reflecting that. He is leaning towards granting the application. Mr. Wolf then questioned the fact that the regulations changed. Mr. Snaith responded noting that before the 2002 split lot regulation, this was legal to be a 2 lot subdivision. They were worried about larger tracts and cutting them up with split lots and bow ties, here the lot is just slightly over 4 acres and was set up to comply at the time it was created. He further commented that he thinks that the split lot zoning is meant to deal with larger developments.

Mr. Wolf commented that he doesn't know what P&Z were thinking, but thinks this is what they did not want to see. In order to gain two building lots, they have to divide by the road or the right of way. He is not sure that they should take the position that they should look backwards and they should honor the regulations and prevent the split lot from occurring. Mr. Snaith commented that he does not think that this would establish a precedent for split lots. Discussion ensued.

Ms. Mulcahey commented that this situation is quite unique and she can see both sides. She agrees with Mr. Snaith that this should be "grandfathered". The approval was already in process and had an obstacle not been raised by Mr. Weeks, they would not be sitting here today. She responded to Mr. Wolf's comment by noting that who is to say this is the kind of thing that the P&Z were looking at when they made the split lot

regulation. The P&Z is not supposed to be making regulations based on one specific case, it is to be based in a more generalized nature and not towards specific lots in town. She noted that it was disappointing that there is not some documentation of Mr. Rogers' position, but they were not required to do so. She suggested that they listen to tapes from that P&Z hearing.

Mr. Noyes commented that he thought Ms. Mulcahey's suggestion to listen to the tapes was good. He noted that there are two elements here, did P& Z demand the combination or was it a strong suggestion that led to the joining of the applications which set up the condition where one refused to file the mylar. It could be considered a hardship on the part of applicant Rogers that he was somewhat victimized by the partner in the mylar not being filed. At the time that P&Z approved the subdivision in 2000, the regulations regarding split lots was not yet created and he has a feeling in his mind of this lot having been grandfathered.

Discussion continued and it was decided that they would try to get the tapes from that P&Z hearing on December 6, 1999. It was further decided that a special meeting would be set for July 8, 2008 to continue discussion on this matter.

Ken Edgar, newly appointed alternate came forward to introduce himself. He noted that he is trained as a tax attorney, he and his family moved to Weston in August of 2006 and he is looking forward to giving back to the residents of Weston.

#### MOTION TO ADJOURN

Hearing no additional business Mr. Wolf made a motion to adjourn the meeting and Mr. Snaith seconded. All in favor, the meeting adjourned at 8:56 p.m.

Respectfully submitted,

Delana Lustberg  
Board Clerk